IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

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WRIT PETITION NO : 16268 of 1994

Between:

Sri Pydah venkata Chalapathi Ghoultry and charities,Kakinada rep. by it's Heriditory Managing Trustee Sri Pydah Sreeramakrishna Murthy, S/o. Satyanarayana Murthy, age 65 years, R/o. Kakinada. **..... PETITIONER**

AND

1 B.Nagabhushana Rao, S/o.Narayanamurty, Kakinada,East Godavari

District.
2 B.Veera Venkata Satyanarayana, S/o. Narayanamurty, Kakinada ,

East Godavari District.
3 B.Verabhadrarao, S/o. Narayanamurty, Kakinada , East Godavari District.
4 B.Subbarao, S/o. Narayanamurty, Kakinada , East Godavari District.
5 B.Syamala, W/o. Narayanamurty, Sarpavarm.
6 Komarthi Suryarao, S/o. Ramulu, Sarpavaram
7 K.Raghavulu, S/o. Latchaiah, Sarpavaram
8 Telisetti Sathiraju, S/o. Veeraju, Sarpavaram
9 Kamarthi Nagaraju, S/o. Ramulu, Sarpavaram
10 Komarthi Chakra Rao, S/o. Ramulu, Sarpavaram
11 Pulla Dhanaraju S/o. Latchaiah, Sarpavaram
12 Manepalli Atcharao, S/o. acharao, Sarpavaram
13 Baswa Bhadram, S/o. Narayana, Sarpavaram.
14 Kamireddi Chakrarao, S/o. Naraiah, Sarpavaram.
15 Pulla Chakrarao, S/o. Naraiah, Sarpavaram.
16 Talisetti Surya Prakasa Rao, S/o. Veeranna, Sarpavaram.
17 III addl. Dist. Judge-Cum-Appellate Authority Under Andhra Tenacy Act,

Kakinada.
18 Special Officer Under the Andhra Tenacy Act, Kakinada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction especially in the nature of a Writ of Certiorari calling for the records relating to and connected with the order passed in A.T.A.No.4/ 1988 dt.25-8-1993 by the III Addl. District Judge-cum-Appellate Authority under the Andhra Tenancy Act, Kakinada and to quash the same and confirm the order passed by the Special Officer under the Andhra Tenancy Act, Kakinada (18th respondent) in A.T.C.No. 337/81 dt.28-6-1988.

Counsel for the Petitioner : MR.I.NAGESH

Counsel for the Respondents : GP FOR REVENUE

The Court made the following :

ORDER :

This is a Writ Petition, challenging the order of III Additional District Judge, Kakinada in Tenancy Appeal A.T.A.No.54 of 1988 passed on 25th of August 1993.

The petitioners claim to be owners of the property and they claimed that the first Respondent was the tenant and other unofficial respondents were the sub-tenants. They sought eviction of the tenant and sub-tenants on various grounds. Tenancy was disputed and one of the issues framed was;

> *"Whether the petitioner has established that the 1st respondent is the tenant and respondents No.3 to 14 are sub-tenants ?"*

Finding on this issue was reversed by the appellate Court. The learned Counsel for petitioners has argued that PWs.1 and 2 were the main witnesses of the petitioners, whose evidence was eschewed on the ground that they had not been cross-examined due to death. Record reveals that when they were examined, the respondents were in exparte and after the exparte proceedings were set aside, they could not be brought back to the witness box as they had died. According to the learned Counsel for the petitioners, their evidence had been eschewed by the trial Court, which was not correct and had their evidence not been eschewed, the result of the case would have been different and in this connection, he relies on a judgment of this Court reported in *Somagutta Erapa Reddy (died) & Others Vs. Palapandla Chinna Gangappa & Others*. Counsel for

petitioners has also relied on a judgment reported in *Maharaja of Kolhapur v. S.Sundaram Ayyar and others* and also in a judgment reported in *Sashi Jena & Others Vs. Khadal Swain & Another*.

On the other hand the Counsel for respondent relies on a judgment reported in *Narsingh Das Vs. Gokul Prasad & Others*, in which it has been held that evidence of a witness, who dies before his cross-examination, cannot be admitted, as it cannot be said that the evidence was concluded.

In Para 8 of the judgment of this Court relied upon by the Counsel for petitioners (1 supra), it is held;

> *"Thus, the evidence given by a witness, although he had not been cross-examined, may be admissible in evidence. However, weight or probative value attached to such evidence would depend upon facts and circumstances of each case. Whether such evidence should be taken or not would depend upon the fact as to how far and to what extent the deposition has been made; whether the witness has spoken about the relevant facts and the stage of examination in chief is also relevant."*

I have my own doubts about the correctness of the views expressed by the Division Bench, but I do not think that, that would detain me further in deciding the matter in view of the fact that though the trial Court stated that the evidence of these two witnesses was not admissible, yet, it discussed their evidence and came to the conclusion that their testimony had not proved that there was a relationship of landlord and tenant between the parties. In Para 22 of the judgment, it is held;

> *"**22**. Even if the evidence of P.Ws.1 and 2 is taken into consideration, it does not help the petitioner. P.W.1 is the Clerk. He simply deposed that the schedule land was given on lease to the 1st respondent on an yearly cist of Rs.400/-. He did not say from which date the lease was commenced. He deposed that the 1st respondent failed to pay the cist from 1974-75 to 1976-77. The 1st respondent who is examined as P.W.2 deposed that he took the land on lease in 1971-72 on a yearly maktha of Rs.400/- so, the contention of the petitioner that the land was leased out to the*

1st respondent in 1970-71 is false. The petitioner did not issue atleast any notice to the 1st respondent when 1st respondent is alleged to have committed default in payment of the cist. No documentary evidence is produced by the petitioner-choultry to show that the 1st respondent is the tenant. Hence, adverse inference can be drawn for non-filing the accounts of the petitioner that if filed, they would reveal that 1st respondent is not the tenant and respondents 2 to 13 are the tenants. P.W.2 did not say that R.W.1 paid maktha for 1974-75 to 1976-77. According to P.W.1, the respondents 2 to 13 together took the land on lease. In such a case, respondents 3 to 13 should pay their share of the cist separately. P.W.2 deposed that he knows respondents 2 to 13 and that he gave that land to them through 2nd respondent for raising vegetables. The evidence of P.Ws.1, 2 and R.W.1 is inconsistent with each other. Their evidence did not establish that 1st respondent is tenant from 1970-71 in respect of the petition schedule land."

Even if the evidence of P.Ws.1 and 2 was not eschewed, even then, it was not proved that there was a relationship of landlord and tenant between the parties. Therefore, no interference is called for in the order of the appellate Court.

Writ Petition is accordingly dismissed. No order as to costs.

20th January, 2005 BILAL NAZKI, J

ajr

To

1 The III Addl. District Judge-Cum-Appellate Authority Under Andhra Tenacy Act, Kakinada.

2 The Special Officer Under the Andhra Tenacy Act, Kakinada.

3 Two C.Cs. to the GP for Revenue, High Court Buildings, Hyderabad (OUT).

4 Two C.D. copies.